Y 1.1/8:99-420

99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
99-420

MFSO

SEAFOOD MARKETING COUNCILS ACT

DECEMBER 5, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 2935]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries to whom was referred the bill (H.R. 2935) to promote the consumption of fish and fish products in the United States through the establishment of seafood marketing councils, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act shall be cited as the "Seafood Marketing Councils Act".

SEC. 2. FINDING.

The Congress finds that it is in the national interest to promote the consumption of fish and fish products.

SEC. 3. PURPOSES.

The purposes of this Act are to—

(1) strengthen the competitive position of the United States seafood industry in the domestic and international marketplace;

(2) encourage the development and utilization of all species of fish available for harvest by the United States industry;

(3) encourage the utilization of domestically produced fish and fish products through market enhancement, promotion, and public relations;

(4) encourage the United States fishing industry to develop methods to improve product quality and efficiency in the marketplace;

(5) educate and inform consumers on the use of fish and fish products;

(6) educate and inform the public about the nutritional and dietary value of fish and fish products; and

(7) enhance the role of the private sector in promoting the consumption of fish and fish products.

71-006 O

ORIGINAL

GOVT FILE/ED

BEST COPY AVAILABLE

SEC. 4. DEFINITIONS.

As used in this Act--

(1) The term "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(2) The term "council" refers to a seafood marketing council established under section 5.

(3) The term "consumer education" means actions undertaken to inform consumers on matters related to the consumption of fish and fish products.

(4) The term "fish" means finfish, molluscs, crustaceans, and all other forms of marine and freshwater life used for human consumption.

(5) The term "fish processing vessel" means a vessel that is used for the preparation of fish or fish products, other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing or brine chilling, for commercial sale.

(6) The term "fish product" means a product used for human consumption that consists, in whole or in part, of fish.

(7) The term "handle" means—

(A) the sale of fish and fish products by harvesters to receivers;

(B) the purchase of fish and fish products by receivers from harvesters; or

(C) the importation of fish and fish products by importers.

(8) The term "marketing and promotion" means an activity aimed at encouraging the consumption of fish and fish products or expanding or maintaining commercial markets for fish and fish products.

(9) The term "person" means—

(A) any individual who is a citizen or national of the United States;

(B) any group of individuals described in subparagraph (A); or

(C) any partnership, corporation, association, cooperative, or other private entity organized or existing under the laws of the United States or any State, commonwealth, territory, or possession of the United States.

(10) The term "quality standard" means a standard reflecting the relative degree or level of excellence of a fish or fish product.

(11) The term "research" means any type of research designed to advance the image, desirability, usage, marketability, production or quality of fish and fish products.

(12) The term "sector" means any of the following:

(A) The harvesting sector consisting of persons in the business of catching fish for purposes of sale.

(B) The importing sector consisting of persons in the business of importing fish or fish products into the United States or who acts as agents, brokers, or consignees for any person or nation that produces fish or fish products outside of the United States for sale in the United States.

(C) The marketing sector consisting of persons in the business of selling fish or fish products in the wholesale, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products.

(D) The processing sector consisting of persons in the business of preparing or packaging fish or fish products for sale and who are not receivers.

(E) The receiving sector consisting of owners of fish processing vessels and of persons in the business of acquiring fish directly from harvesters.

(F) The consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products.

(13) The term "United States" means the several States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands and any other territory, possession, or commonwealth of the United States.

SEC. 5. COUNCIL ESTABLISHMENT.

(a) IN GENERAL.—An application for a charter for a seafood marketing council for one or more species of fish and fish products of that species may be filed by persons who meet the requirements specified in accordance with subsection (b)(6).

(b) APPLICATION.—An application for a charter for a council shall be made by filing with the Administrator the text of a proposed charter in such form as shall be prescribed by regulation by the Administrator. The text of a proposed charter must contain such information as the Administrator considers necessary or appropriate for carrying out the provisions of this Act, including but not limited to—

(1) the name of the council and a provision proclaiming its establishment;

(2) a declaration of the purposes and objectives of the council;

BEST COPY AVAILABLE

(3) a description of the species of fish and the fish products for which the council will implement marketing and promotion plans under section 6;

(4) the identification of each sector and the number and terms of representatives thereof that will be represented as voting members of the council;

(5) the identification of those sectors (including harvesters, receivers and, if subject to assessment, importers) subject to a referendum to establish a council under subsection (e);

(6) a specification for each sector described under paragraph (5) of the minimum requirements, as measured by income, volume, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in that referendum;

(7)(A) a description of the procedures for determining assessment rates under section 8;

(B) the proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(C) the maximum amount an assessment rate for any period may be raised above the rate applicable for the immediately preceding period; and

(D) the maximum rate or rates that can be imposed by a council on receivers or importers during the operation of the council;

(8) a provision setting forth the definition of a quorum and the procedures for selecting a council chairman;

(9) a provision setting forth the voting procedures applicable to absentee council members; and

(10) such other provisions relating to Council administration as the Administrator deems necessary.

The text of a proposed charter shall be accompanied by a document identifying, to the extent practicable by address of place of business, the persons (hereinafter referred to in this Act as "sector participants") that are considered by the applicants to meet the requirements specified in paragraph (6). The text of a proposed charter shall include provisions setting forth procedures for providing refunds to those sector participants subject to assessment under section 8, and may also include provisions which establish a maximum limit on the amount that any one sector participant may be required to pay under an assessment for any period.

(c) COUNCIL REQUIREMENTS.—The Administrator may not approve a proposed charter filed under subsection (a) unless the proposed council meets the following requirements:

(1) The council must have voting members representing the harvesting, receiving and, if subject to assessment, the importing sectors.

(2) The members of a council shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as council members.

(d) APPROVAL OF PROPOSED CHARTERS BY ADMINISTRATOR.—(1) Within 180 days of the receipt of an application to establish a council, the Administrator shall—

(A) identify, to the extent practicable, those sector participants that meet the requirements, specified under subsection (b)(6), for eligibility to participate in the referendum under subsection (e);

(B) determine, to the extent practicable, if the charter is accompanied by a petition comprised of the signatures or corporate certifications, as the case may be, of no less than three sector participants in each sector identified in accordance with subsection (b)(5) who collectively accounted for, in the twelve-month period immediately preceding the month in which the application was filed, not less than 10 per centum of the value of the fish or fish products described in accordance with subsection (b)(3) that were handled by each sector identified in accordance with subsection (b)(5) during that period; and

(C) determine if the proposed charter is consistent with the provisions of this Act and any other applicable law.

(2) If negative determinations are made under paragraph (1) regarding an application and charter, the Administration shall advise in writing the sector participants who made the application of the reasons therefor. A corrected application may be submitted thereafter to the Administrator for approval.

(e) REFERENDA.—(1) Upon making affirmative determinations under subsection (d)(1) regarding a proposed charter, the Administrator, within 90 days after the date of the last of those determinations, shall hold a referendum on the adoption of the proposed charter among all sector participants identified in accordance with subparagraph (d)(1)(A). If a majority of the voting sector participants in each sector who collectively accounted for, in the twelve-month period immediately preceding the month in which the proposed charter was filed under subsection (a), 66 per centum

BEST COPY AVAILABLE

or more of the value of the fish or fish products described in accordance with subsection (b)(3) that were handled by that sector during that period approve the proposed charter, the Administrator shall by order establish the council and the proposed charter, as so approved, shall thereafter be treated as its charter.

(2) Not less than thirty days prior to holding a referendum under this subsection, the Administrator shall—

(A) publish (by such means as will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and a list of those sector participants eligible to vote in the referendum; and

(B) provide for public comment including the opportunity for a public meeting.

(3) The Administrator shall pay all costs of the referendum which establishes a council under this subsection; but within two years after the Council is established, the Council shall reimburse the Administrator for any expenses incurred for the conduct of the referendum from assessments collected by the Council. Prior to the holding of a referendum under this subsection, the Administrator shall require sureties to post a bond or other security acceptable to the Administrator, in an amount which the Administrator determines to be sufficient to pay any expenses incurred for the conduct of the referendum, and shall immediately recover such amount if a referendum fails to establish the Council. For the purpose of this Act, the term "expenses incurred for the conduct of the referendum" shall not include salaries of Government employees or other administrative overhead, but shall be limited to those additional direct costs incurred in connection therewith.

(f) COUNCIL MEMBER APPOINTMENTS.—(1) Within thirty days after a council is established under subsection (e), the Administrator shall solicit from the sectors represented on the council nominations for council members. If the harvesters and receivers represented on the council are engaged in business in two or more regions of the United States, the nominations made under this paragraph, and the appointments to the council made under paragraph (3), must, to the extent practicable, result in representation for the constituent regions.

(2) No individual is eligible for nomination or appointment as a council member unless that individual is knowledgable and experienced with regard to the activities of the sector which that individual will represent on the council and is or has been actively engaged in the business of the sector which that individual will represent on the council.

(3) The Administrator, within sixty days after the close of the thirty-day period in paragraph (1), shall appoint the members of the council from the nominees.

(4) A vacancy on a council shall be filled, within sixty days after the vacancy occurs, in the same manner in which the original appointment was made. A council member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

(5) The Administrator shall remove any council member if the council concerned first recommends removal for cause by not less than two thirds of the council members. A removal recommendation of a council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

(g) COUNCIL STATUS.—A council is not an instrumentality of the United States Government.

SEC. 6. FUNCTIONS AND POWERS OF COUNCILS.

(a) FUNCTIONS.—

(1) Each council shall—

(A) adopt a seal which shall be judicially noticed;

(B) implement all terms of its charter;

(C) prepare and submit to the Administrator, for review and approval under section 7(a)(1), a marketing and promotion plan and amendments thereto which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the council;

(D) implement and administer an approved marketing and promotion plan and amendments thereto;

(E) determine the assessments to be made under section 8 and administer the collection of the assessments to finance council expenses described in paragraph (2);

(F) receive, investigate and report to the Administrator accounts of violations of rules or orders relating to assessments collected pursuant to section 8, or quality standard requirements established under subsection (c);

(G) prepare and submit to the Administrator, for review and approval under section 7(a)(1), a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the council including—

(i) all administrative and contractual expenses,

(ii) the probable costs of consumer education, research, and other marketing and promotion plans or projects,

(iii) the costs of the collection of assessments, and

(iv) the expense of repayment of the costs of each referendum conducted in regard to the council;

(H) maintain books and records, prepare and submit to the Administrator such reports from time to time as may be necessary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be submitted to the Administrator at the end of each fiscal year;

(I) reimburse the Administrator for the expenses incurred for the conduct of the referendum to establish the council or a subsequent referendum to terminate the council that faiis; and

(J) prepare and submit to the Administrator from time to time such reports or proposals as a council determines appropriate for furthering the purposes of this Act.

(2) Funds collected by a council under section 8 shall be used by the council for—

(A) research, promotion and consumer information activities regarding the quality and marketing of fish and fish products;

(B) other expenses as described in subsection (a)(1)(G);

(C) such other expenses for the administration, maintenance, and functioning of the council as may be authorized by the Administrator;

(D) any reserve fund established under subsection (b)(5) and any administrative expenses incurred by the Administrator specified as reimbursable under this Act.

(3) Marketing and promotion plans and amendments thereto prepared by a council under subsection (a)(1)(C) shall be designed to increase the general demand for fish and fish products described accordance with section 5(b)(3) by encouraging, expanding, and improving the marketing, promotion and utilization of the fish and fish products, in d estic or foreign markets or both, through consumer education, research, and other marketing and promotion activities.

(4) Consumer education and other marketing and promotion activities carried out by a council under a marketing and promotion plan and amendments thereto may not contain references to any private brand or trade name and shall avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(b) POWERS.—A council—

(1) may sue and be sued;

(2) may enter into contracts;

(3) may employ and determine the salary of an executive director who may, with the approval of the council, employ and determine the salary of such additional staff as may be necessary;

(4) may collaborate with other councils in establishing and implementing a national marketing and promotion plan for one or more species of fish or fish products; and

(5) may establish a reserve fund from monies collected and received under section 8 to permit an effective and sustained program of research, promotion, and consumer education regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced; but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(c) QUALITY STANDARDS.—(1) A council may develop and submit to the Administrator for approval, or upon the request of a council the Administrator shall develop, quality standards for a fish or fish product described in accordance with section 5(b)(3). Any quality standard developed under this paragraph shall be consistent with the purposes of this Act.

(2) A quality standard developed under paragraph (1) may be adopted by a council by a majority of the council members if first approved, in a referendum conducted by the council, by a majority of the voting sector participants of the sector concerned who collectively accounted for, in the 12-month period immediately preced-

BEST COPY AVAILABLE

ing the month in which the referendum is held, not less than 66 per centum of the value of the fish or fish products described in accordance with section 5(b)(3) that were handled by that sector.

(3) With respect to a quality standard adopted under paragraph (2), the council shall develop and file with the Administrator an official identification in the form of a symbol, stamp, label, or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product.

(4) The Administrator shall establish by regulation procedures for the use of an official identification filed with the Administrator under paragraph (3). Misuse of an official identification established under this section shall constitute a violation of this Act.

(5) Prior to issuing final regulations under paragraph (4) the Administrator shall—

(A) publish the proposed regulations by such means as will result in wide publicity in affected regions; and

(B) provide for public comment and the opportunity for a public hearing.

(6) A council may receive, investigate and report to the Administrator accounts of violations of regulations issued under paragraph (4).

(7) Any regulation issued under paragraph (4) shall be immediately repealed by the Administrator upon the termination under section 11 of the Council that developed the official identification to which the regulations apply.

(8) The procedures applicable to the adoption and the taking effect of a quality standard developed under this subsection also apply to the subsequent amendment or termination of the standard.

(d) CHARTER AMENDMENTS.—A council may submit to the Administrator amendments to the text of the council's charter. Any proposed amendments to a charter shall be approved or disapproved in the same manner as the original charter was approved under section 5 (d) and (e) with the exception of section 5(d)(1)(B).

SEC. 7. FUNCTIONS AND POWERS OF THE ADMINISTRATOR.

(a) FUNCTIONS.—In addition to the duties prescribed under section 5, the Administrator shall—

(1) review, for consistency with the provisions of the Act and other applicable law, and approve or disapprove, marketing promotion plans and budgets within sixty days after their submission by a council;

(2) immediately notify a council in writing of the disapproval of a marketing and promotion plan or budget and reasons therefor;

(3) issue orders and amendments thereto that are necessary to implement quality standards under section 6(c);

(4) promulgate regulations necessary to carry out the purposes of this Act;

(5) enforce the provisions of this Act as provided under section 12; and

(6) make all appointments to the councils in accordance with section 5(f).

(b) POWERS.—The Administrator may provide, on a reimbursable or other basis, such administrative or technical assistance as the councils may request for purposes of the initial organization and subsequent operation of the Council.

SEC. 8. ASSESSMENTS.

(a) IN GENERAL.—A council shall impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the council in carrying out its functions under this Act.

(b) NATURE OF ASSESSMENTS.—(1) Assessments shall be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved council charter.

(2) An assessment on sector participants in the receiving sector is—

(A) except for owners of fish processing vessels, in the form of a percentage of the value of the fish described in accordance with section 5(b)(3) when purchased by those participants from fish harvesters; and

(B) for owners of fish processing vessels, in the form of a percentage of the value of the fish described in accordance with section 5(b)(3) and harvested by such vessels that is no less than the value of those fish as determined in subparagraph (A).

(3) An assessment on sector participants in the importing sector is in the form of a percentage of the value, as determined for the purposes of the customs laws, of the fish or fish products described in accordance with section 5(b)(3) when entered, or withdrawn from warehouse for consumption, in the customs territory of the United States by those participants.

BEST COPY AVAILABLE

(c) EXCEPTIONS.—A council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the council under section 5(e) by reason of failure to meet the requirements specified under section 5(b)(6).

(d) VOLUNTARY PAYMENTS.—Any person may make voluntary payments or in-kind contributions to a council for purposes of assisting the council in carrying out its functions.

(e) COUNCIL ACCOUNTS.—All funds collected or received by a council under this Section shall be deposited by the council in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council shall be limited to those authorized under this section.

(f) CONFIDENTIALITY OF INFORMATION.—(1) Sector participants shall make available to the Administrator such information and data as is necessary for the effectuation, administration or enforcement of this Act or any order or regulation issued pursuant to this Act. Except as provided in paragraphs (2) and (3), any information obtained in carrying out this subsection shall be kept confidential by all officers and employees of the National Oceanic and Atmospheric Administration, independent accountants and other persons who have access to such information.

(2) If the Administrator or an employee of the United States Government is party to a suit or administrative action involving an assessment, order, or regulation issued under this Act, the Administrator may disclose information obtained under paragraph (1) to the extent allowed by the judicial or administrative officer presiding over such suit or action.

(3) This subsection shall not prohibit—

(A) the issuance of general or statistical statements based upon reports of a number of persons subject to the provisions of this Act which do not identify the information furnished by any person; or

(B) the publication by direction of the Administrator of the name of any person violating a requirement relating to the assessment imposed under section 8(a) or to quality standards implemented by the Administrator under section 6(c), and a statement of the particular provisions of the requirement violated by such person.

(4) Any individual who is required to keep information confidential under this subsection and who knowingly violates this subsection shall, upon conviction, be—

(A) subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both; and

(B) removed from office if an officer or employee of a council or the National Oceanic and Atmospheric Administration.

(g) PROHIBITION.—It shall be unlawful for any person to use the seal under subsection 6(a) or the official identification under subsection 6(c) unless such person is paying assessments under section 8 or has the express written permission of the Council to use the seal or official identification. The Administrator shall issue regulations to implement this prohibition.

SEC. 9. PETITIONS.

(a) IN GENERAL.—Any person subject to assessment under section 8 may file a written petition with the Administrator alleging that—

(1) the assessment;

(2) the plan approved under section 7(a)(1) on which the assessment is based; or

(3) any obligation imposed under the plan;

is not in accordance with law and requesting the Administrator to modify, or take other appropriate action regarding the assessment or plan.

(b) PROCEDURAL REQUIREMENTS.—Petitions shall be in writing and filed within the period prescribed by the Administrator. A person who files a petition under this section shall be given an opportunity for a hearing regarding the petition in accordance with regulations issued by the Administrator. After hearing, or if no hearing is requested, after consideration of all documentation and other evidence, the Administrator shall make a ruling upon the petition.

SEC. 10. REFUNDS.

Notwithstanding any other provision of this Act, any person who pays an assessment shall have the right to demand and promptly receive from the Council a refund of such assessment. A demand for refund must be made in accordance with the procedures and within such time, as shall be prescribed by the Council and as approved by the Administrator.

BEST COPY AVAILABLE

SEC. 11. COUNCIL TERMINATION.

(a) PETITION AND REFERENDUM.—(1) A petition to terminate a council may be filed with the Administrator by no less than three sector participants in any one sector. Any petition filed under this subsection shall be accompanied by a written document explaining the reasons for the petition.

(2) If the Administrator determines that a petition filed under paragraph (1) is accompanied by the signatures, or corporate certifications, as the case may be, of no less than three sector participants in a sector referred to in paragraph (1) who collectively accounted for, in the twelve-month period immediately preceding the month in which the petition to terminate was filed, not less than 20 per centum of the value of the fish or fish products described in accordance with section 5(b)(3) that were handled by that sector during that period, the Administrator, within 90 days after that determination, shall hold a referendum for termination of the council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum under this subsection, the Administrator shall publish a notice of such referendum including the document explaining the reasons for the petition filed under paragraph (1) and any other relevant information the Administrator deems appropriate.

(4) If a majority of the voting sector participants who, in the period referred to in paragraph (2), collectively accounted for not less than 66 per centum of the value of such fish and fish products that were handled during that period by a sector referred to in paragraph (1) approve a referendum to terminate a council, the Administrator shall by order terminate the council effective as of a date by which the affairs of the council may be concluded on an orderly basis.

(5) The Administrator initially shall pay all costs of a referendum to terminate a council under this subsection. Prior to the holding of a referendum under this section, the Administrator shall require sureties to post a bond or other security acceptable to the Administrator in an amount which the Administrator determines to be sufficient to pay any expenses incurred for the conduct of the referendum.

(6)(A) If a referendum conducted under this section fails to result in the termination of the council, the Administrator shall immediately recover the amount of the bond posted by sureties under paragraph (5).

(B) If a referendum conducted under this section results in the termination of the council, the Administrator shall recover the expenses incurred for the conduct of the referendum from the account established by the council under section 8(e). If the amount remaining in such account is insufficient for the Administrator to recover all expenses incurred for the conduct of the referendum, the Administrator shall recover the balance of such expenses from the sureties that posted a bond under paragraph (5).

(b) RETURN OF ASSESSMENTS.—If a council is terminated under subsection (a), the Administrator, after recovering all expenses incurred for the conduct of the referendum under subsection (a), shall take such action as is necessary and practicable to ensure that moneys remaining in the account established by the council under section 8(e) are paid on a prorated basis to the sector participants from whom those moneys were collected under section 8.

SEC. 12. ENFORCEMENT.

(a) IN GENERAL.—(1) The district courts of the United States shall have jurisdiction specifically to enforce and to prevent and restrain any person from violating any assessment, order or regulation made or issued under this Act.

(2)(A) If the Council has reason to believe that a person subject to an assessment, order or regulation made or issued under this Act is violating such assessment, order or regulation, it may refer the matter to the Administrator.

(B) Except as provided in subparagraphs (C) or (D), any civil action authorized to be brought under this subsection, when referred by a council under subparagraph (A), shall be referred to the Attorney General for appropriate action.

(C) If the Administrator believes that the administration and enforcement of the provisions of the Act would be adequately served by taking administrative action under subsection (b) or providing written notice or warning to any person committing a violation of this Act, the Administrator is not required to refer such violation to the Attorney General.

(D) Whenever a matter has been referred by a Council under subparagraph (A) and the Administrator or the Attorney General fails within 60 days of such referral to take appropriate action, the Council may, upon filing notice with the Administrator or Attorney General, as appropriate, and other interested parties, bring an action under its own name.

BEST COPY AVAILABLE

(b) PENALTIES.—(1)(A) When a Council brings an action under subsection (a)(2), it shall be entitled to recover costs of litigation, and where the action is brought to collect an unpaid assessment, interest from the date the amount became due and payable.

(B) Any person who violates any provision of any order, (including a cease and desist order previously issued under this paragraph) or regulation issued by the Administrator under this Act, or who fails or refuses to pay, collect, or remit any assessment required under this Act, may be assessed a civil penalty by the Administrator of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to, or in lieu of, a civil penalty under this subparagraph, the Administrator may issue an order requiring such person to cease and desist from continuing such violation.

(C) No penalty shall be assessed, or cease and desist order issued, under this paragraph unless the affected person is given notice and opportunity for a hearing before the Administrator with respect to such violation.

(D) Any order of the Administrator under this paragraph assessing a penalty or imposing a cease and desist order shall be final and conclusive, unless the affected person files an appeal from the Administrator's order with the appropriate United States court of appeals.

(2)(A) Any person against whom a violation is found under paragraph (1) may obtain review of such action in the United States court of appeals for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator.

(B) The Administrator shall promptly file in the court a certified copy of the record upon which such violation was found.

(C) The findings of the Administrator shall be set aside only if found to be unsupported by substantial evidence or if not in accordance with law.

(3)(A) If any person fails to pay a civil penalty after it has become final, the Administrator shall refer the matter to the Attorney General.

(B) The Attorney General shall institute appropriate action to recover the amount assessed under this subsection in a district court of the United States.

(C) If, within sixty days after such referral, the Attorney General fails to file a civil action, the council to whose programs the assessment, order or regulation relates may institute an action in its own name.

SEC. 13. INVESTIGATIONS.

(a) IN GENERAL.—The Administrator may make such investigations as the Administrator determines necessary to—

(1) carry out the Administrator's responsibilities under this Act; and

(2) determine whether any person has engaged in any act or practice which constitutes a violation of the provisions of this Act.

(b) POWERS.—For the purpose of investigations under subsection (a), the Administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) ENFORCEMENT.—In case of contumacy or refusal to obey a subpoena by any person, the Administrator may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, to require the attendance and testimony of witnesses and the production of books, papers, and documents. Such court may issue an order requiring such person to appear before the Administrator to produce records or to give testimony relating to the matter under investigation.

SEC. 14. APPROPRIATIONS.

Any authority of the Administrator to make payments under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

PURPOSE OF THE LEGISLATION

The bill, as reported, will enable the United States seafood industry to design, establish, and fund seafood marketing councils for the purpose of increasing the consumption of fish and fish products through education, promotion, research, and marketing efforts.

BEST COPY AVAILABLE

LEGISLATIVE BACKGROUND

H.R. 2935 was introduced on July 9, 1985, by Congressmen Breaux, Jones, Lent, and Young. The legislation was referred to the Committee on Merchant Marine and Fisheries.

During the 98th Congress a similar measure, S. 2160, was introduced in the Senate. This bill called for the creation of a national seafood marketing council supported by Federal funding for the first four years and subsequently by assessments. It lacked provisions for a referendum to establish the council or voluntary refund of assessments. The bill passed the Senate on October 10, 1984. This legislation was not acted on by the House of Representatives prior to the sine die adjournment of the 98th Congress.

On July 17, 1985, the Subcommittee on Fisheries and Wildlife Conservation and the Environment conducted a hearing on H.R. 2935, receiving testimony from the Honorable William G. Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, and representatives of various fishing and seafood industry organizations. The Administration witness supported the concept of strengthening the competitive position of the U.S. seafood industry but said that such promotion should be without the intervention of the Federal Government. The witnesses from the U.S. seafood industry, in general, supported the approach taken in the bill.

On October 8, 1985, the Subcommittee met in open markup and reported H.R. 2935 after adopting an amendment in the nature of a substitute offered by Mr. Breaux. On December 5, 1985, the legislation was considered in open markup by the Committee on Merchant Marine and Fisheries and ordered reported by unanimous voice vote after the adoption of an amendment in the nature of a substitute offered by Mr. Breaux for himself and Chairman Jones.

THE AMENDMENT

The amendment adopted by the Committee achieves several purposes.

First, Council charters would be required to specify the maximum amount that assessments may be raised in any one period and the maximum assessment rate that may be applied during the operation of a Council.

Second, the structure of the Council in terms of the number of voting members, process for appointing alternate members, and the use of proxy votes, would be left to the discretion of a Council and approval by the Administrator, rather than specified by the Act.

Third, the number of voting participants required for approval of a charter or termination thereof via referendum would be increased from those accounting for at least 50 percent of the value of the seafood product or products to be promoted by a Council to a majority of those voting who collectively represent two-thirds of the value of such product or products.

Fourth, any region having harvesters and receivers who are subject to a Council's assessment shall, to the extent practical, have member representation on such Councils.

Fifth, the Council is deemed not to be an entity of the Federal Government.

BEST COPY AVAILABLE

Sixth, the Council's sources of revenue would be limited to assessments and voluntary contributions.

Seventh, the Administrator would no longer have responsibility for administration of the Council's fund.

Eighth, Councils may not impose assessments on any individual who was not eligible to vote in the referendum establishing such Council.

Ninth, unauthorized persons are prohibited from using a Council's seal of identification or mark signifying that a seafood product meets a specific quality standard.

Tenth, persons subject to assessment would be given the right to challenge a Council's assessments, marketing plan, or obligations imposed under such plan that are alleged not to be in accordance with law.

Eleventh, any person subject to assessments would retain the right to request and promptly receive a refund.

Twelfth, the Administrator would be able to recover referendum costs incurred in the termination or attempted termination of a Council.

Thirteenth, the enforcement procedures under the Act are clarified and the Councils are specifically authorized to take action in the district courts if the Councils are not satisfied that appropriate actions have been taken within 60 days on matters referred to the Administrator or Attorney General.

Fourteenth, limitations on judicial review of decisions or findings of the Administrator or district courts are eliminated.

Fifteenth, payments made by the Administrator under the Act are limited to the extent or in such amounts as are provided in appropriation acts and provisions authorizing specific appropriations pursuant to this Act are deleted.

BACKGROUND AND NEED

The Magnuson Fishery Conservation and Management Act (MFCMA), and subsequent amendments to the Act, have been successful in allocating the seafood resources found within the United States Exclusive Economic Zone for the benefit of the domestic fishing industry. Since the enactment of the MFCMA in 1976, the Act's domestic harvester and processor preferences have resulted in an increase in the total ex-vessel value of U.S.-harvested seafood from around $1 billion in 1976 to more than $2.5 billion in 1984.

While the consumption of fishery products in the United States reached a record 13.6 pounds per person in 1984, Americans ate 12.9 pounds per person in 1976. Even though recent medical research indicates that the presence of certain chemical substances in fish can significantly reduce the incidence of cardiovascular disease in people who eat seafood, Americans continue to consume more than 10 times as much red meat as fish.

A 1984, five-year comparison of the investments in seafood advertising with those of the producers of substitutable food products showed a 10 percent decline in seafood advertising expenditures compared with tremendous increases by competing food groups. For example, poultry advertising investments increased by 167 percent and red meat advertising investments increased by 55 percent

BEST COPY AVAILABLE

during this period. The report, by Dr. Robert Buzzel of the Harvard Business School, criticized the seafood industry for undermarketing its product due to a lack of knowledge of markets and consumers and for not being successful in developing new products.

While the confirmation of the healthful and nutritive value of seafood has been referred to as an "ad-man's dream", the seafood industry has been unable to capitalize on getting this message to an increasingly health-oriented American consumer.

The Committee notes the successes of several state and regional efforts in aggressively marketing seafood products. Organizations such as the Alaska Seafood Marketing Institute, the Maine Groundfish Association, the Rhode Island Seafood Council, the Louisiana Seafood Promotion and Marketing Board, and the Regional Fishery Development Foundations are credited with increasing the consumption of both traditional and underutilized fish and fish products, both in the United States and in international markets. It is generally recognized, however, that the financial resources of these groups are limited and that more money needs to be invested in the marketing of domestic seafood products so that the competitive position of the U.S. seafood industry can be strengthened.

The Committee also notes that legislation was developed, but not enacted, during the 98th Congress that would have established a National Fisheries Marketing Council. The purpose of this legislation, S. 2160, was to conduct a national, generic program of seafood promotion, consumer education, and research in the United States in order to increase seafood sales. This legislation would have authorized the expenditure of several million dollars from the Fisheries Loan Fund and the Saltonstall-Kennedy Fund before the seafood industry would begin to pay for the operations of the Council through self-imposed assessments after four years.

Soon after the 99th Congress convened, the warm water shrimp industry and other segments of the U.S. seafood industry approached the Committee, asking for specific Federal authority to establish seafood marketing councils due to the industry's inability to enforce the collection of assessments to pay for marketing programs solely through peer pressure.

While the Committee agrees with the overall purpose of S. 2160, the Committee believes that the seafood industry should be given the opportunity to organize its own species-specific and product-specific marketing councils and should pay for their operation through self-imposed assessments based upon the value of those products.

Like S. 2160, the Seafood Marketing Councils Act is patterned after legislation that has been enacted to establish marketing and promotional boards for agricultural commodities. Since 1966, Federal legislation has authorized the establishment of promotional boards for cotton, wool, potatoes, eggs, wheat, beef, floral, and dairy products. All but the beef and floral boards were approved through industry-wide referenda.

The Committee believes that the establishment of similar seafood marketing councils will result in increased consumer demand for seafood products and ensure the continued development of the U.S. seafood industry. The diversity of seafood products, however, does not lend itself to national generic campaigns like commodities such as eggs or wheat do. Most industry representatives agree that spe-

BEST COPY AVAILABLE

cies-specific and product-specific promotional campaigns will better serve the seafood industry. While the primary focus of this bill is not on a national, generic approach to seafood marketing, individual councils have been given the specific authority to enter into national promotional campaigns if they agree to do so.

The Committee also recognizes that there is a diversity of opinion within the seafood industry about the advisability of assessing imported fishery products to pay for the operation of a marketing council. Some industry representatives argue that these products should be assessed in order to gain additional revenue and should be promoted because increasing the consumption of seafood in the United States, no matter where it is harvested, will ultimately benefit the U.S. industry. Others believe that seafood marketing councils should only be used to promote domestic seafood products, both in the United States and in overseas markets. Because the Committee believes that these decisions are best made by the individuals directly involved in the seafood industry, this bill allows for representation on a council by the importing sector only if the council intends to assess imported products.

While the value of domestic landings have increased by 40 percent since the enactment of the MFCMA, the total value of fisheries products imported into the United States has increased at the same rate during that period. The Committee recognizes that this fact is of great concern to many in the U.S. industry and believes that the establishment of seafood marketing councils could help to reduce the U.S. trade deficit by encouraging the consumption of domestic fishery products both in the U.S. and in overseas markets.

SECTION-BY-SECTION ANALYSIS

There follows a section-by-section analysis of H.R. 2935 accompanied by discussion where appropriate.

Section 1

Section 1 of the bill cites the short title of this legislation as the "Seafood Marketing Councils Act."

Section 2

Section 2 of the bill sets forth the findings of the Congress in developing this legislation.

Section 3

Section 3 of the bill sets forth the purposes of the Congress for developing this legislation.

Section 4

Section 4 of the bill provides definitions for a number of significant terms used throughout the legislation. The Committee wishes to provide further clarification and explanation of a number of these terms.

The term Administrator is defined to mean the Administrator of the National Oceanic and Atmospheric Administration (NOAA). The Committee fully recognizes that NOAA is an agency under the direction of the Secretary of Commerce, however, the Committee

BEST COPY AVAILABLE

believes that the Administrator of NOAA should be specifically identified as the federal official directly responsible and accountable to Congress for the administration and implementation of this legislation.

The term "consumer education" is defined as actions to be undertaken by a Council established under this legislation to inform consumers, either domestic or foreign, on matters related to the consumption of fish and fish products. The Committee wishes to stress that such matters should include, among other things, information regarding the human health attributes related to the consumption of seafood. Recent medical research indicates that certain polyunsaturated fats contained in seafood may, when consumed, contribute to the reduction of coronary heart disease in humans. The Committee believes that the public at large has a fundamental right to be informed and educated regarding means to improve human health and that the federal government shares in the responsibility to disseminate this information.

The terms "fish" and "fish product" are defined to include virtually all forms of aquatic life, both animal and vegetable, used for human consumption. The Committee does not intend for this legislation to be used for the promotion of fish or fish products which are used for industrial purposes, pet food, or other animal feed.

The term "fish processing" vessel is defined to be generally consistent with the term as used in the Commercial Fishing Industry Vessel Act (46 U.S.C. 2101(11)(b)). This definition is expanded in this bill to exclude vessels, such as certain shrimp vessels operating in the Gulf of Mexico, that simply freeze their catch as a means to extend the length of time the vessel may remain at sea. The Committee intends for this term to apply to vessels that produce finished seafood products, including but not limited to, filets, frozen block, and surimi. The Committee does not intend for this term to apply to vessels which alter the state of their catch strictly for the purpose of maintaining the freshness of their catch while on board the vessel.

The term "handle" is intended to refer to the value of fish or fish products involved in certain transactions within the seafood industry and provides a relative weight to the vote of an individual sector participant in the various petitions and referenda filed and conducted under this legislation. With regard to harvesters, the term refers to the value of the fish or fish product sold to a receiver (the point of first purchase) as determined by receiver purchase receipts, logs, or such other means as the Administrator deems appropriate and as are consistent with the provisions of this legislation. With regard to receivers and importers, the term is meant to refer to the same values on which assessments for these sectors are based under Section 8 of the legislation.

With regard to the term "quality standards," the Committee intends for this term to refer to what is essentially a product grade similar to the familiar grades found on poultry and beef products. This standard or "grade" should reflect certain inherent physical and chemical characteristics of the product which in some way distinguish the product as being superior to a product which does not possess such characteristics. Further, the Committee intends for

BEST COPY AVAILABLE

these characteristics to be reflected by means of a seal or mark of identification readily recognizable by the consumer.

With regard to the various definitions of sector, the Committee does not intend for the "harvesting sector" to exclude those producers of seafood (including crawfish and catfish) which culture their product rather than harvest wild resources. The intent of this bill is to promote the consumption of quality seafood regardless of where or how it is produced. The Committee further notes that it was necessary to classify fish processing vessels as receivers because of the relatively finished nature of the product they land.

Section 5

Section 5 of the bill sets forth the procedure by which members of the seafood industry can establish a marketing council. Generally, this section specifies the application requirements, council and charter requirements, procedures and criteria for charter and council approval, and procedures and criteria for council member appointments.

With specific regard to charter requirements under Section 5(b)(2), the Committee intends that the purposes and objectives of the council shall be consistent with those of this legislation. With regard to paragraph (b)(3), the Committee notes that the scope of a council may be defined in a charter by one species; it may be regionally oriented by including several species characteristic of, for example, the New England region; or, as specified under Section 6, two or more councils established under this legislation may collaborate on a national, generic seafood marketing program. With regard to paragraph (b)(4), the Committee intends that at a minimum, harvesters and receivers and, if subject to assessment, importers must be represented on a council. The Committee does not intend to preclude other sectors defined in section 4 from being represented on the council, but the Committee does intend for this decision to rest with the applicants. Furthermore, the Committee suggests that it might be desirable for the applicants to specify in the proposed charter some means for staggering the terms of council members to ensure smooth, continuous operation of the council. Provisions for limiting the length and number of terms of council members would also be appropriate provisions of a proposed charter.

With respect to paragraph (b)(5), the Committee intends for receivers and, if subject to assessment, importers to have a vote on the establishment or termination of a council. The purpose of this provision is to guarantee a vote to anyone assessed under this legislation. In addition, the Committee intends to guarantee all harvesters a vote on the establishment or termination of a council although harvesters are specifically exempt from assessments. The Committee recognizes that the harvesters may share the burden of assessments paid by receivers.

With respect to paragraph (b)(6), the Committee recognizes the extreme range in size of seafood and fishing business in the United States and the logistical difficulties in identifying and assessing small or part-time firms. This provision is intended to provide the applicants with the flexibility to account for these logistical realities by establishing in the proposed charter minimum require-

BEST COPY AVAILABLE

ments, such as gross level of income from seafood sales, for participation in a council.

With regard to paragraph (b)(7), the Committee intends to ensure that sector participants faced with a referendum to establish a council are fully aware of all relevant aspects of the assessment requirements proposed in the charter.

Paragraphs (5)(b)(8), (9) and (10) are intended to provide the seafood industry with the flexibility to tailor the administrative and decision-making procedures of a council to their specific needs.

Section 5(b) also contains several free-standing provisions. The first requires applicants to provide the Administrator with as complete a list as is possible of those in industry that would be affected by assessments. The second such provision requires the applicants to specify in the proposed charter the procedures the council will follow in providing refunds of assessments under Section 10. This provision also authorizes the applicants to establish a maximum limit of assessments on individuals and to specify such limitation.

Section 5(c) is intended to clarify further that harvesters, receivers and, if subject to assessment, importers are guaranteed voting representation on the council. This subsection also makes it clear that council members are to serve without compensation, but may receive compensation for reasonable expenses.

Subsection 5(d) sets forth the procedures for the Administrator to approve or disapprove, proposed charters. Generally, the Committee intends that in all functions of the Administrator under this legislation, the appropriate provisions of the Administrative Procedures Act (APA) shall apply. However, in the case of references to those time requirements in this bill that are different than those that would apply under the provisions of the APA, it is intended that the provisions of this bill supercede the provisions of the APA.

With respect to paragraph (d)(1), the Committee recognizes the difficulty in identifying all sector participants under a proposed charter and that some flexibility must occur in determining the validity of a petition under subparagraph (d)(1)(B). The Committee recognizes that the 10 percent threshold is simply an arbitrary figure which may serve to screen out proposals which have not been carefully considered by the applicants. The Committee also suggests that the Administrator use the public comment process required under Section 5(e)(2) to further refine the list of sector participants under a proposed charter prior to a referendum. Lastly, the Committee intends for applicants to be able to resubmit disapproved applications for establishing a council after correcting deficiencies in the application identified by the Administrator.

With regard to subparagraph (d)(1)(C), the Committee intends that the Administrator ensure that proposed charters are consistent with the provisions of this Act. Moreover, the Committee intends that such charters be consistent with applicable law prior to their approval by the Administrator.

Section 5(e) sets forth the procedures for the Administrator to conduct referenda to establish a council. Generally, the Committee intends for referenda to be conducted by such means as the Administrator deems appropriate but which promote both effectiveness and cost-efficiency. With respect to paragraph 5(e)(2)(A), the Committee intends that persons not eligible to vote by reason of their

BEST COPY AVAILABLE

not being in the appropriate seafood business at the time of the referendum not be excluded from the applicable assessments and activities of a council should they enter such business subsequent to the referendum and establishment of such council.

Section 5(f) sets forth the procedures and requirements for council member appointments. Generally, the Committee intends that council members are to have direct experience in the business of the sector they are to represent, particularly with respect to the fish or fish products specified in the council charter. The Committee does not feel it is appropriate for persons to be appointed as council members if their experience in the seafood industry is limited to legal or political representation of the industry. Further, the Committee intends that the Administrator, in making appointments to a council under subsection 5(f), insure that any region having harvesters and receivers who are subject to or affected by a council's assessments have representation on such councils.

Section 6

Section 6 of the bill sets forth the functions and powers of a council. The significant responsibilities of the councils under subsection (a) are to develop and implement a marketing and promotion plan for, the fish and fish products specified in their charter and to develop a detailed budget accounting for all collections and disbursements of funds. Generally, the Committee intends for council responsibilities to be carried out in a manner which is consistent with the provisions of this legislation.

Subsection (b) sets forth the discretionary authorities of a council. Specifically, two or more councils are authorized to collaborate in establishing and implementing a national marketing plan. The Committee wishes to encourage the councils to devise a national, generic seafood marketing and promotion program, particularly one that stresses the health attributes of a fish diet.

Subsection (c) sets forth the discretionary authority of the councils to establish quality standards and an official indentification showing such standards have been met. The Committee does not intend for quality standards to be compulsory and does not intend to restrict the opportunity for individuals to sell seafood of any quality currently allowed by existing law. Further, neither a quality standard nor a seal is to be used by a council, or by council members, to influence fisheries management by, for example, suggesting that fish caught using one gear type are of a higher quality than other fish of the same species. Instead, the Committee intends for quality standards to be available to individuals in the seafood industry who voluntarily wish to produce a superior product and who want to be able to identify and market it as such. Furthermore, the Committee intends to protect those individuals from misuse of an official identification of quality standards by others. The Committee believes that the availability of high-quality seafood, easily identified by the consumer, will lead to an increase in the consumption of seafood. Therefore, the Committee intends for the councils to promote the use of an official indentification of quality standards by the seafood industry and to promote the consumption of products bearing an offical identification of quality standards.

BEST COPY AVAILABLE

Section 7

Section 7 of the bill sets forth further responsibilities of the Administrator in reviewing and approving or disapproving council marketing plans and budgets if not in accordance with this Act and other applicable law. In addition, subsection 7(a) directs the Administrator to issue orders and amendments thereto for implementing quality standards. The Committee wishes to clarify that the term "order" is synonymous with "regulation" and therefore subject to APA applicability.

Section 8

Section 8 of the bill sets forth the procedures for councils to impose and administer assessments on receivers, including fish processing, vessels, and importers. Section 8 also clarifies that only those receivers and importers eligible to vote in a referendum under the criteria set forth under section 5(b)(6) are subject to assessment. In addition, section 8 authorizes the councils to receive voluntary payments. The Committee does not intend for such voluntary payments to be made for specific services rendered by the council to another party, but, instead, such payments are strictly intended to be in the form of contributions toward the operation of the council. The Committee intends that the sole sources of funds for the councils shall be assessments collected from industry and voluntary payments or contributions made under this section.

Section 8 further directs the councils to establish accounts to hold receipts under this section. Lastly, subsection 8(f) sets forth the requirements for persons to make available certain data to the Administrator and the responsibilities of the Administrator to maintain the confidentiality of such data.

Section 9

Generally, section 9 of the bill sets forth the procedures by which an individual aggrieved by an assessment, or any other obligation imposed by this legislation, can pursue relief and be assured due process under the law.

Section 10

Section 10 of the bill recognizes the right of an individual subject to assessments to demand and promptly receive a refund, and further directs the council to develop procedures for providing refunds which are acceptable to the Administrator.

Section 11

Section 11 of the bill sets forth the procedure for terminating a council. The procedure is intended to generally follow that of establishing a council. However, the threshold for petitions of 20 percent is higher than that for establishing a council (10 percent). This difference was intended to reduce spurious and expensive efforts to terminate a council. In addition, section 11 provides that if a council is terminated, any funds remaining in the council's account shall be returned on a prorated basis to those who have paid assessments.

BEST COPY AVAILABLE

Section 12

Section 12 of the bill sets forth the procedures for the councils, the Administrator, and the Attorney General to impose civil penalties on individuals who violate provisions of this legislation.

Section 13

Consistent with section 12, section 13 authorizes the Administrator to make investigations to determine whether any individual is acting in violation of this legislation.

Section 14

Section 14 restricts the authority of the Administrator to make expenditures under this legislation in any given fiscal year to such amounts as are provided in appropriations legislation. The Committee wishes to clarify that such amounts do not need to be specifically referenced in appropriations legislation but that the Administrator already possesses the necessary general authority to expend monies for the purposes of this legislation from whatever appropriations are made each year. In this regard, the Committee notes that this legislation does not contain any new authorization of appropriations.

COST OF THE LEGISLATION

In the event the legislation is enacted into law, the Committee estimates there would be no significant additional cost to the Federal Government.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2935 would have no significant inflationary impact on the prices and costs in the national economy.

COMPLIANCE WITH CLAUSE 2(l)(3) OF RULE XI

With respect to the requirement of clause 2(l)(3) of rule XI of the Rules of the House of Representatives—

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment held a hearing on this Act on July 17, 1985.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 2(b)(2) of rule X.

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974 in reference to H.R. 2935, and follows herewith:

BEST COPY AVAILABLE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 5, 1985.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2935, the Seafood Marketing Councils Act, as ordered reported by the House Committee on Merchant Marine and Fisheries, December 4, 1985. We estimate that enactment of this bill would result in net costs to the federal government of about $100,000–$200,000 annually, beginning in 1986.

H.R. 2935 would allow members of the various sectors of the United States fishing industry to establish government-endorsed seafood marketing councils. The bill would authorize the Administrator of the National Oceanic and Atmospheric Administration (NOAA) to approve the proposed council charters, to conduct an industry referendum for each proposed council, to appoint council members, to approve each council's budget and marketing plan, to issue regulations and to oversee the operations of the councils. The bill would also authorize NOAA to enforce the provisions of the bill, although if NOAA failed to take action within 60 days, a council would have authority to bring action under its own name.

Based on experience with similar councils, we have assumed that NOAA would have little direct financial involvement with the seafood councils, and that each would pay for its own operations. The marketing councils are expected to form slowly, perhaps one each year or two, beginning in 1987. Although NOAA would be required to conduct a referendum of potential sector participants in each council, the bill would require each council to reimburse NOAA within two years for all direct costs that are incurred by NOAA in conducting the referendum. (The reimbursement would exclude NOAA salaries and overhead.) These collections would directly offset the appropriations used to fund NOAA's expenses. The net costs to NOAA for program start-up and maintenance costs are expected to be about $100,000–$200,000 annually over the next five years, depending upon the number of referenda conducted, and assuming reimbursement of about one-half the cost of conducting a referendum. Expenditures by NOAA for these purposes would require appropriation action.

Based on information from NOAA, we have also assumed that the agency would not incur any costs to enforce the collection of assessments paid by members to the council, but rather that all assessments, inspection and enforcement costs would be paid by each council. If NOAA were to become involved in any enforcement actions, their costs to implement this bill would exceed the $100,000–$200,000 estimated annual level.

No costs would be incurred by state or local governments as a result of enactment of this bill.

BEST COPY AVAILABLE

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER,
Director.

DEPARTMENTAL REPORTS

Executive comments were requested from the Departments of the Interior and Commerce. No responses have been received prior to the filing of this report.

O

BEST COPY AVAILABLE